



Comptroller General
of the United States

Washington, D.C. 20548

Gorczycki

Decision

Matter of: Garratt-Callahan Company

File: B-246895

Date: April 8, 1992

Harold D. Vex for the protester.
C. Dale Duvall, Department of Veterans Affairs, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award by a mandatory user agency of the Federal Supply Schedule to other than the lowest priced schedule vendor is improper where all of the reasons cited the agency for ordering from the higher priced vendor are unreasonable.

DECISION

Garratt-Callahan Company protests the issuance of delivery order No. 642-C20238 to Betz-Entec, Inc. by the Department of Veterans Affairs (VA) for chemical maintenance of water cooling treatment facilities and other related cooling and heating systems at the VA Medical Center, Philadelphia, Pennsylvania.

We sustain the protest.

The chemicals and services to maintain water cooling treatment facilities and other related facilities on site for the period from October 1, 1991, through September 30, 1992, were covered by General Services Administration (GSA) mandatory Federal Supply Schedule (FSS) contracts. VA orally requested quotations from vendors on the FSS. Garratt-Callahan, the incumbent, submitted a quote of \$10,200 and Betz-Entec quoted \$12,400.

The VA engineer asserted that delivery under Betz-Entec's FSS contract represented a better value to the government for a variety of reasons. Specifically, Betz-Entec offered VA: (1) a bulk chemical storage system that would reduce handling of chemicals by VA personnel, eliminate storage and disposal of empty drums, and provide better inventory control; (2) a potential water savings worth \$3,168; (3) better handling of pipe corrosion and sediment buildup

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problems; and (4) a greater amount of chemicals. Based on this study, the contracting officer determined that VA should place an order under Betz-Entec's FSS contract.

Garratt-Callahan met with VA regarding this determination and filed a protest with VA on October 22. The record indicates that VA issued the delivery order for this requirement to Betz-Entec on November 21 for the period December 1, 1991, to September 30, 1992.¹ On November 27, VA denied Garratt-Callahan's protest. Garratt-Callahan protested to our Office on December 5. Garratt-Callahan argues that it was the low priced vendor and that VA was required to issue the delivery order to the low priced vendor.

Quotations solicited from the FSS vendors are not offers that can be accepted by the government; rather, they are informational responses to an agency's request for quotations indicating the supplies or services the vendors would propose to meet the agency's requirements and the price of those supplies and services that the agency may use as the basis for issuing a delivery order to an FSS contractor. Office & Bus. Prods., Inc., B-232007, Oct. 19, 1988, 88-2 CPD ¶ 371. An agency using the mandatory FSS must order from the lowest priced vendor consistent with its minimum needs unless it prepares an appropriate justification for purchase from a higher priced vendor. Federal Acquisition Regulation (FAR) § 8.405-1(a) (FAC 90-5); Federal Property Management Regulations § 101-26.408-2 (1991); Datum Filing Sys., Inc., B-230886.2, July 28, 1988, 88-2 CPD ¶ 97.

VA argues that the price of this purchase was below the minimum regulatory price threshold for the FAR § 8.405-1(a) justification requirement. Justification for orders from other than the low priced vendor is required for all line items exceeding 10 percent of the small purchase limitation of \$25,000, that being \$2,500. FAR §§ 8.405-1(a), 13.105(a) (FAC 90-7), 13.106 (FAC 90-7); see also 41 C.F.R. § 101-26.408-2 (1991) (justification required for the award of a line item exceeding \$500 where award is made to other than the low priced vendor). The delivery order issued to Betz-Entec had only one line item and the Betz-Entec price of \$12,400 exceeds the \$2,500 threshold. Consequently, VA was required to justify its selection of the higher priced vendor in accordance with FAR § 8.405-1(a).

¹It is not clear how these chemical services were acquired during the period from September 30 to December 1. Garratt-Callahan's services under the previous delivery order apparently ceased as of September 30.

VA also argues that it properly justified issuing a delivery order to the higher priced vendor because delivery by Betz-Entec would be advantageous to the government, since it would provide additional, more cost efficient, or more desirable services than would Garratt-Callahan. VA enumerates a number of separate justifications to support placing the order with the higher priced vendor. None of these justifications reasonably supports the order.

VA first found that Betz-Entec's quotation included bulk storage containers for the chemicals on site, as opposed to the 15, 30, and 55 gallon drums delivered by Garratt-Callahan under its current order. The contracting officer determined that bulk storage would eliminate handling and transportation of drums by VA personnel, which would reduce the amount of labor performed by VA, create a safer work environment, and eliminate VA's need to dispose of empty drums. VA also asserts that bulk storage would provide improved inventory control.

Garratt-Callahan states that since VA did not mention a desire for bulk delivery and storage when it requested quotes, Garratt-Callahan did not provide any information about bulk delivery and storage in its quotation. Garratt-Callahan states that it does provide on-site bulk storage and delivery at no extra charge under its FSS contract, and that it informed VA of this in a meeting on October 9 after it became aware that VA might be interested in that form of delivery.

A review of Garratt-Callahan's FSS contract shows that the contract does provide for bulk storage containers and delivery at no extra charge. Since the obligations of a vendor are defined by the vendor's FSS contract rather than its response to the agency's request for information, an ordering agency should be cognizant of and consider the services available under the FSS contract in determining with which vendor to place an order.² See Datum Filing Sys., Inc., supra; Lanier Bus. Prods., Inc., B-223675, Nov. 12, 1986, 86-2 CPD ¶ 551.

Here, it is not disputed that VA was made cognizant of the fact that Garratt-Callahan's FSS contract offered bulk delivery and storage at no extra charge before it placed the order with Betz-Entec on November 21. Accordingly, VA cannot justify the selection of the higher priced vendor

²Similarly, VA references training that will be provided by Betz-Entec. Garratt-Callahan has offered, and its FSS contract provides for, training that appears to be compatible to that offered by Betz-Entec.

based upon Betz-Entec's offer of bulk storage.³ VA's sole reliance on information in the vendor's quotations was inadequate here because VA did not identify bulk delivery/storage as a requirement in requesting vendor information and had previously expressed no dissatisfaction with the on-site delivery of containers, which was how its needs had previously been satisfied by Garratt-Callahan.

The potential water savings valued at \$3,168 that allegedly would be realized if Betz-Entec supplied the chemicals was calculated by Betz-Entec on the basis of its proposed higher "cycles of concentration" in the cooling towers than was used by Garratt-Callahan. Our review indicates that this justification also lacks a reasonable basis.

We understand that cycles of concentration relates to the rate at which water in the system must be replaced in order to maintain a constant volume of water and to control sedimentation within the system. As cycles of concentration increase, water use decreases. Chemical treatment of water in the cooling system is used to keep particles such as minerals and dirt suspended in the water. The particles that do not remain suspended settle in the system causing equipment to become clogged or corroded. If all else remains unchanged, an increase in cycles of concentration may result in greater sedimentation within the system due to an increase in the amount of particles in the water. Thus, an increase in cycles of concentration may result in damage to equipment unless other factors, such as decreasing the particles entering the system or chemically increasing the water's capacity to suspend particles, are adjusted accordingly.

Garratt-Callahan explains that the VA cooling facilities were operating at five cycles of concentration due to dusty conditions created by on-site construction. The relatively low cycles of concentration were assertedly warranted to remove the higher concentration of particles in the cooling water, which was caused by the construction, before sedimentation could occur and damage VA equipment. According to Garratt-Callahan, the on-site construction has ceased and the cleaner air would permit it to safely operate at seven cycles of concentration as proposed in Betz-Entec's computation.

³If Garratt-Callahan provided bulk delivery, VA's concerns about transferring chemicals from drums into the system and receiving metered receipts and credits for unused portions of drums would apparently be satisfied.

VA adopted Betz-Entec's water savings computation without considering whether Garratt-Callahan could maintain the system at higher cycles of concentration. There is no indication in the record of any inherent differences between Betz-Entec's and Garratt-Callahan's chemical treatments that would indicate that Betz-Entec's treatment is more efficient than Garratt-Callahan's.⁴ Also, VA does not indicate that it considered whether the higher cycles of concentration proposed by Betz-Entec would provide a similar level of protection to VA equipment as provided by the lower cycles of concentration previously used with Garratt-Callahan's chemical treatment. Under the circumstances, we find the asserted water savings justification is not supported by the record.

A third justification is that Betz-Entec could better handle pipe corrosion. According to the VA engineer, pipe corrosion was reported to Garratt-Callahan in August of 1988, and Garratt-Callahan claimed that the corrosion was not within the scope of its contract and declined to repair the pipes. The engineer noted that during previous delivery periods serviced by Betz-Entec, that vendor had repaired corroded pipes and periodically inspected the system.

Garratt-Callahan states that it serviced the VA Medical Center from October 1, 1986, to September 30, 1991, which included periodic inspections without any downtime, damage to equipment, or complaints from VA. It explains that the instance of corrosion in August of 1988 involved a section of pipe positioned outside of the water treatment area serviced by Garratt-Callahan and thus was not attributable to Garratt-Callahan. At that time, Garratt-Callahan consulted with VA regarding the corrosion problem and provided advice that has apparently controlled the problem. Garratt-Callahan denies that VA ever requested it to repair

⁴Even if the record would have supported a conclusion that Betz-Entec could maintain higher cycles of concentration, the cost savings justification is flawed. VA failed to verify Betz-Entec's alleged water savings of \$3,168. Betz-Entec compared its proposed seven cycles of concentration versus four cycles of concentration. However, since the VA cooling towers were operating at five cycles of concentration using Garratt-Callahan's system, the hypothetical savings alleged by Betz-Entec and adopted by VA is incorrect. Our recalculation of the alleged savings, using Betz-Entec's formula and comparing seven cycles versus five cycles, produces a savings of only \$1,584--one half the savings that VA used to justify its decision to order from a vendor that quoted \$2,200 higher than the lowest priced vendor.

or pay for the repair of the pipes.⁵ Nor is there any indication that this repair was Garratt-Callahan's responsibility. Finally, repair of corroded equipment does not appear to be within the scope of either Garratt-Callahan's or Betz-Entec's FSS contract, nor is such repair addressed in their quotations; and from our review of the record, it appears that there is no obligation for, or even a promise from, Betz-Entec to perform this work.⁶ Therefore, the alleged differences of the vendors in responding to pipe corrosion do not support award to the higher priced vendor.

VA's final justification for selecting Betz-Entec was that Betz-Entec would provide a greater quantity of chemicals. VA does not explain why this justifies a higher price, and no logical explanation is apparent, given that both vendors quoted fixed monthly rates for chemical service.⁷ In addition, VA miscalculated the quantity of chemicals quoted by Betz-Entec;⁸ it appears that Garratt-Callahan actually quoted the greater quantity of chemicals. Therefore, VA's justification on this point was incorrect.

The contracting officer's justifications for selecting a higher priced vendor do not support the order. Under the circumstances, the delivery order was improperly issued to Betz-Entec and Garratt-Callahan was entitled to the order.

We recommend that VA terminate the delivery order issued to Betz-Entec under its FSS contract and issue a delivery order to Garratt-Callahan, the lowest priced vendor. Garratt-Callahan is also entitled to its costs of filing and

⁵In fact, the Garratt-Callahan employee, who VA alleges was contacted regarding responsibility for the 1988 pipe repair, allegedly did not begin working for Garratt-Callahan until 1989.

⁶The record does not indicate what Betz-Entec's obligations were under its earlier contract to supply these chemicals as to whether it was obligated to repair corroded pipes.

⁷VA did not find Garratt-Callahan's quotation technically unacceptable. Since both vendors would satisfy VA's water treatment requirements, the quantity of chemicals supplied appears irrelevant. A greater quantity of chemicals supplied at a higher total price does not necessarily result in a better value.

⁸VA calculated the total pounds of chemicals quoted by each vendor and compared an incorrect total of 5,841 lbs. for Betz-Entec to Garratt-Callahan's total of 5,759 lbs. However, Betz-Entec only quoted a total of 4,841 lbs. of chemicals.

pursuing the protest, including reasonable attorneys' fees.
✓ 4 C.F.R. § 21.6(d)(1) (1991). Garratt-Callahan should
submit its certified claim for its protest costs directly to
the agency within 60 working days of receipt of this
decision. 56 Fed. Reg. 3759 (1991) (to be codified at
4 C.F.R. § 21.6(f)(1)).

The protest is sustained.

Milton J. Fowler

Comptroller General
Acting of the United States